

ESTTA Tracking number: **ESTTA433017**

Filing date: **09/29/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

### Petitioner Information

Name	LayerZero Power Systems, Inc.		
Entity	Corporation	Citizenship	Ohio
Address	8893 Lake in the Woods Trail Chagrin Falls, OH 44023 UNITED STATES		

Correspondence information	Raymond Rundelli Calfee, Halter & Griswold LLP 800 Superior Avenue Suite 1400 Cleveland, OH 44114-2688 UNITED STATES ipdocket@calfee.com, rrundelli@calfee.com, jcastrovinci@calfee.com Phone:216-622-8200
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### Registrations Subject to Cancellation

Registration No	3998542	Registration date	07/19/2011
Registrant	Ortronics, Inc. 125 Eugene O'Neill Drive New London, CT 06320 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 009. First Use: 2009/11/05 First Use In Commerce: 2009/11/05  
All goods and services in the class are cancelled, namely: equipment for voice and data communications systems, namely, cable management racks and cabinets for copper and fiber optic data cables for structured cabling systems

### Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)		
Registration No	3998543	Registration date	07/19/2011
Registrant	Ortronics, Inc. 125 Eugene O'Neill Drive New London, CT 06320 UNITED STATES		


### Goods/Services Subject to Cancellation

Class 009. First Use: 2009/11/05 First Use In Commerce: 2009/11/05  
All goods and services in the class are cancelled, namely: equipment for voice and data communications systems, namely, cable management racks and cabinets for copper and fiber optic data cables for structured cabling systems

## Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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## Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77727998	Application Date	05/04/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	LAYERZERO POWER SYSTEMS, INC.		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2001/04/26 First Use In Commerce: 2001/04/26 electrical static transfer switches, electrical power distribution units, electrical integrated static transfer switch-power distribution unit systems, electrical remote power panels, and electrical remote distribution panels		

Attachments	77727998#TMSN.jpeg ( 1 page )( bytes ) Petition for Cancellation of LAYER ZERO and LAYER 0.pdf ( 6 pages )(297540 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Juliet P. Castrovinci/
Name	Juliet P. Castrovinci
Date	09/29/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

*In the Matter of Registration Nos.: 3,998,542 and 3,998,543*

*For the Marks: LAYER ZERO and LAYER 0*

*Date of Issue: July 19, 2011*

<b>LAYERZERO POWER SYSTEMS, INC.,</b>	)	
	)	
Petitioner,	)	Cancellation No.:
	)	
v.	)	
	)	
<b>ORTRONICS, INC.</b>	)	
	)	
	)	
Registrant.	)	

**PETITION FOR CANCELLATION**

Petitioner, LayerZero Power Systems, Inc. ("LayerZero" or "Petitioner"), is an Ohio corporation with a place of business at 8893 Lake in the Woods Trail, Chagrin Falls, Ohio 44023. Petitioner believes that it is being, has been and will be damaged by the continued existence of the above-referenced registrations on the Principal Register, and hereby petitions for the cancellation of those registrations.

The grounds for cancellation are as follows:

1. Ortronics, Inc. ("Ortronics"), is the record owner of U.S. Trademark Registration No. 3,998,542 for the mark LAYER ZERO and U.S. Trademark Registration No. 3,998,543 (jointly the "'542 and '543 Registrations") for the mark LAYER 0, which are registered on the Principal Register in International Class 009 for "equipment for voice and data communications systems, namely, cable management racks and cabinets for copper and fiber

optic data cables for structured cabling systems.” The ’542 and ’543 Registrations issued on July 19, 2011.

2. Petitioner is the record owner of the currently pending U.S. Trademark Application No. 77/727,998 (the “’998 Application”) for the mark LAYERZERO POWER SYSTEMS, INC., which requests registration of the mark in the International Class 009 for “electrical static transfer switches, electrical power distribution units, electrical integrated static transfer switch-power distribution unit systems, electrical remote power panels, and electrical remote distribution panels.” The ’998 Application was filed on May 4, 2009.

3. LayerZero began using the mark LAYERZERO POWER SYSTEMS, INC. in commerce on or in connection with static transfer switches, power distribution units, static transfer switches, remote power panels, remote distributions panels and related products at least as early as April 26, 2001, and has been using the mark LAYERZERO POWER SYSTEMS, INC. continuously in commerce since that time.

4. Petitioner incorporated under the name LayerZero Power Systems, Inc. on April 3, 2001, and since that time has done business continuously under the trade names “LayerZero” and “LayerZero Power Systems.”

5. As a result of the continuous use and promotion of the mark LAYERZERO POWER SYSTEMS, INC. by Petitioner, and the continuous conduct of business by Petitioner under the trade names “LayerZero” and “LayerZero Power Systems,” that mark and those trade names have become and continues to function as a valuable business and marketing asset of Petitioner, and the serves to indicate to trade and consumers the quality products originating from Petitioner while the names serve to identify and distinguish Petitioner from other business entities.

6. On August 4, 2009, the Examining Attorney to whom the '998 Application has been assigned for processing identified the applications that subsequently matured into the '542 and '543 Registrations as possible citations in support of a Section 2(d) refusal of the '998 Application.

7. On September 3, 2009, processing of the '998 Application was suspended pending disposition of the applications that matured into the '542 and '543 Registrations.

8. On September 21, 2011, the Examining Attorney to whom the '998 Application has been assigned issued a refusal to register in connection with that application based on the '542 and '543 Registrations.

9. The dominant portion of the mark and trade names of Petitioner on which cancellation is sought is the term "LayerZero."

10. Ortronics' marks LAYER ZERO and LAYER 0 are virtually identical to the dominant portion of the mark and trade names of Petitioner on which cancellation is sought visually, aurally phonetically and in commercial impression.

11. On information and belief, Petitioner's LAYERZERO POWER SYSTEMS, INC. goods, including those described in the '998 Application, are closely related to the goods identified in the '542 and '543 Registrations.

12. On information and belief, Petitioner's LAYERZERO POWER SYSTEMS, INC. static transfer switches, power distribution units, static transfer switches, remote power panels, remote distributions panels, and related products are likely to be used by at least some purchasers in conjunction with the goods identified in the '542 and '543 Registrations.

13. On information and belief, Petitioner's LAYERZERO POWER SYSTEMS, INC. goods, including those described in the '998 Application, are likely to travel through the same channels of trade as the goods identified in the '542 and '543 Registrations.

14. On information and belief, Petitioner's LAYERZERO POWER SYSTEMS, INC. static transfer switches, power distribution units, static transfer switches, remote power panels, remote distributions panels, and related products are likely to be advertised, offered for sale, and/or sold in the same channels of retail trade as the goods identified in the '542 and '543 Registrations.

15. On information and belief, Petitioner's LAYERZERO POWER SYSTEMS, INC. static transfer switches, power distribution units, static transfer switches, remote power panels, remote distributions panels, and related products sold under the mark LAYERZERO POWER SYSTEMS, INC. are likely to be advertised, offered for sale and/or sold to the same ultimate consumer customers as the goods identified in the '542 and '543 Registrations.

16. On information and belief, Ortronics' registration and use of the '542 and '543 Registrations for the goods specified will damage Petitioner by creating a likelihood of confusion as to the source, origin or sponsorship of Petitioner's goods and Registrant's goods among potential purchasers of the goods of both parties.

17. On information and belief, there is no issue as to priority as between Petitioner and Ortronics. Ortronics filed the applications that matured into the '542 and '543 Registrations on September 26, 2008 on an intent-to-use basis pursuant to Section 1(b) of the Trademark Act. Ortronics ultimately claimed a first use date of November 5, 2009. Accordingly, the earliest priority date that can be claimed by Ortronics with respect to both the

'542 and '543 Registrations is the filing date of September 26, 2008, which is more than seven years after the first common-law use by Petitioner of the mark LAYERZERO POWER SYSTEMS, INC. and the trade names "LayerZero" and "LayerZero Power Systems" in 2001.

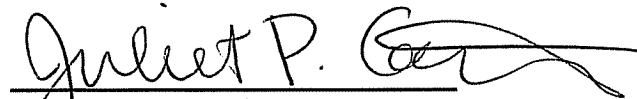
18. The continued existence of the '542 and '543 Registrations despite LayerZero's priority in the mark LAYERZERO POWER SYSTEMS, INC. casts a cloud on Petitioner's own right to use and develop LAYERZERO POWER SYSTEMS, INC. as a mark in the United States, and, as such is and would continue to be a source of damage and injury to Petitioner.

19. The continued existence of the '542 and '543 Registrations despite LayerZero's priority in the mark LAYERZERO POWER SYSTEMS, INC. is likely to prevent Petitioner from obtaining a registration for the mark LAYERZERO POWER SYSTEMS, INC., and, as such is likely to be a source of injury to Petitioner.

WHEREFORE, Petitioner believes that it has been and will be damaged by the '542 and '543 Registrations and prays that they be cancelled and that this Petition for Cancellation be granted pursuant to 15 U.S.C. § 1064(1).

This Petition for Cancellation is being submitted with the required filing fee of \$600.00.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Raymond Rundelli", is written over a horizontal line.

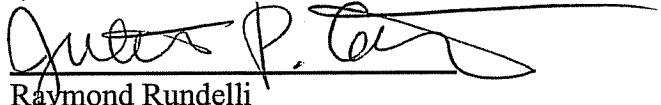
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Attorneys for Petitioner LayerZero Power Systems, Inc.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing **PETITION FOR CANCELLATION** was served on the owner of record as indicated in the records of the U.S. Patent and Trademark Office by mailing a true copy thereof to the owner of record, by first-class mail, postage prepaid, this 29th day of September, 2011, in an envelope addressed as follows:

Ortronics, Inc.  
125 Eugene O'Neill Drive  
New London, CT 06320



Raymond Rundelli

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